

REMARKS

Applicant has carefully reviewed the Application in light of the Office Action mailed February 7, 2005. At the time of the Office Action, Claims 1-25 were pending in the Application. Applicant has previously withdrawn Claims 19-21 from consideration. Applicant amends Claims 1, 5, 7, 11, 13, 17, 22, and 24 without prejudice or disclaimer. Applicant's amendments have been done to advance prosecution in this case and not to overcome prior art. Applicant respectfully requests reconsideration of the pending claims and favorable action in this case.

In the Specification

The Examiner objects to the specification because the Application Serial No. on page 1 is not included. *Office Action*, p. 2. Applicant amends the specification to include the Application Serial No. as requested by the Examiner. Accordingly, Applicant requests reconsideration of this objection.

Section 112 Rejection

The Examiner rejects Claims 1-18 and 22-25 under 35 U.S.C. §112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements. *Office Action*, p. 2. Applicant amends Claims 1, 7, 13, and 22 to address the Examiner's rejection. The independent claims clearly recite determining a "position" of a "frame" that is "in a set of related frames that form the packet." Therefore, Applicants submit that all claims, as amended, include all essential structural cooperative relationships between "position," "frame," "set of related frames," and "packet." Accordingly, Applicant respectfully submits that Claims 1, 7, 13, and 22 together with their dependents are in accordance with 35 U.S.C. §112, second paragraph. Therefore, Applicant requests reconsideration and allowance of Claims 1-18 and 22-25.

The Examiner rejects Claims 5, 11, 17, and 24 under 35 U.S.C. §112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter that Applicant regards as the invention. *Office Action*, p. 3. Applicant amends Claims 5, 11, 17, and 24 to address the Examiner's rejection. Claim 5 includes that "the

allowed number of retransmissions comprises: a first allowed number of retransmissions if the frame is in a first subset of frames in the set of related frames; a second allowed number of retransmissions if the frame is in a second subset of frames in the set of related frames; and a third allowed number of retransmissions if the frame is in a third subset of frames in the set of related frames.” Claims 11, 17, and 24 each recite certain limitations that are similar to Claim 5. Accordingly, Applicant respectfully submits that Claims 5, 11, 17, and 24 comply with 35 U.S.C. §112, second paragraph. Applicant requests reconsideration and allowance of Claims 5, 11, 17, and 24.

Section 102 Rejection

The Examiner rejects Claims 1, 3-4, 6-7, 9-10, 12-13, 15-16, and 18 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 4,439,859 issued to Donnan (hereinafter “*Donnan*”). Applicant respectfully traverses this rejection for the following reasons. “A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987); M.P.E.P. §2131. *Donnan* does not disclose, teach, or suggest, either expressly or inherently, each and every element of the claims.

Applicant respectfully submits that each of the limitations of Claim 1 is not disclosed, taught, or suggested by *Donnan*. For example, *Donnan* does not disclose, teach, or suggest “determining an allowed number of retransmissions for the frame based on the position of the frame in the set of related frames” as recited in Claim 1. *Donnan* only makes a decision to retransmit but does not disclose, teach, or suggest any technique for “determining an allowed number of retransmissions.” Because *Donnan* fails to teach at least this limitation, Applicant respectfully submits that *Donnan* cannot anticipate Claim 1 under 35 U.S.C. §102(b). Thus, Applicant respectfully requests reconsideration and allowance of independent Claim 1 and its dependents.

Independent Claims 7, 13, and 22 each recite certain limitations that, for reasons substantially similar to those discussed with reference to independent Claim 1, *Donnan* does not disclose, teach, or suggest, either expressly or inherently. Therefore, Applicant

respectfully requests reconsideration and allowance of independent Claims 7, 13, and 22 together with their dependents.

Section 103 Rejection

The Examiner rejects Claims 22 and 25 under 35 U.S.C. §103(a) as being unpatentable over *Donnan* in view of U.S. Patent No. 6,618,375 B2 issued to Rezaiifar et al. (hereinafter “*Rezaiifar*”). Applicant respectfully traverses this rejection for the following reasons. To defeat a patent under 35 U.S.C. §103(a), the claimed *combination* must be obvious. *Kimberly-Clark Corp. v. Johnson & Johnson*, 745 F.2d 1437, 223 U.S.P.Q. 603 (Fed. Cir. 1984). Therefore, it is essential to view the invention as a whole, taking each element into account as well as the advantages, properties, utilities, and results of the invention. *In re Chupp*, 816 F.2d 643, 2 U.S.P.Q.2d 1437 (Fed. Cir. 1987).

Applicant respectfully submits that the combination of *Donnan* and *Rezaiifar* fails to disclose, teach, or suggest each limitation recited in Applicant’s Claims 22 and 25. As discussed above, *Donnan* does not disclose, teach, or suggest each limitation in Claim 22. This deficiency is not cured by combining *Donnan* and *Rezaiifar*. Therefore, the combination of *Donnan* and *Rezaiifar* does not disclose, teach, or suggest each limitation in Claim 22. Claim 25 is a dependent claim that includes limitations of independent Claim 22, which has been shown to be allowable, and adds additional elements that further distinguish the combination. The combination as recited does not disclose, teach, or suggest the limitations recited in Claims 22 and 25. Accordingly, Applicant respectfully requests reconsideration and allowance of these claims.

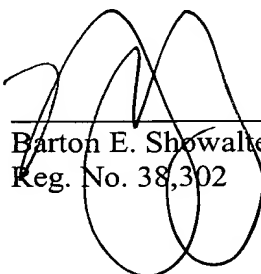
CONCLUSION

Applicant has made an earnest attempt to place this case in condition for allowance. For the foregoing reasons, and for other reasons clearly apparent, Applicant respectfully requests full allowance of all pending Claims. If the Examiner believes that a telephone conference would advance prosecution of this Application in any manner, the undersigned attorney for the Applicant stands ready to conduct such a conference at the convenience of the Examiner.

Applicant believes no fee is due. However, if this is not correct, the Commissioner is hereby authorized to charge any additional fees or credit any overpayments to Deposit Account No. 02-0384 of Baker Botts, L.L.P.

If there are matters that can be discussed by telephone to advance prosecution of this application, Applicant invites the Examiner to contact Barton E. Showalter at (214) 953-6509.

Respectfully submitted,
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